

The Hon. Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

BRENDA L. ENGHAUS, a married individual,

Plaintiff,

vs.

CHRISTOPHER C. KAIN and JANE DOE
KAIN, husband and wife and the marital
community composed thereof, CHRISTOPHER
C. KAIN, M.D., INC., P.S., a Washington
professional service corporation, HARRISON
MEDICAL CENTER, a Washington nonprofit
corporation ,

Defendants.

No. CV 05-5721 RBL

**STIPULATION AND ORDER
REGARDING FED.R.CIV.PRO.
35 EXAMINATION OF
PLAINTIFF**

STIPULATION AND ORDER REGARDING
FED.R.CIV.PRO. 35 EXAMINATION OF
PLAINTIFF - 1

Law Offices
T. JEFFREY KEANE, PLLC
14205 SE 36th Street, Suite 325
Bellevue, Washington 98006
425-460-2294 • Facsimile 425-401-8491

STIPULATION

IT IS HEREBY stipulated and agreed by and between the parties through their respective counsel of record, that plaintiff shall attend a Fed.R.Civ.Pro. 35 examination subject to the conditions contained in the following Order.

DATED this 15th day of January, 2007.

LAW OFFICES OF T. JEFFREY
KEANE, PLLC

WILLIAMS KASTNER &
GIBBS, PLLC

By: /s/ _____
T. Jeffrey Keane, WSBA #8465
Attorney for Plaintiff

By: /s/ _____
Elizabeth McAmis, WSBA #24224
Attorney for Defendants Kain

JOHNSON, GRAFFE, KEAY, MONIZ
& WICK, LLP

By: /s/ _____
Eugene Studer, WSBA #20175
Attorney for Harrison Hospital

ORDER

This matter having come before this Court by stipulation of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED that plaintiff, Brenda Enghaus n/k/a Brenda Foot, is to be examined pursuant to Fed.R.Civ.Pro. 35 under the following conditions:

1. Plaintiff will be examined by Cathy Elvins, OTR/L, CHT, at the request of defendant Kain, on January 18, 2007 starting at 8:00 a.m., at NW Sports Physical Therapy,

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4411 Pt. Fosdick Drive, Suite 101, Gig Harbor, Washington. The examination will not exceed four hours. Fine and gross motor testing of hands and upper extremities will be done during the examination, including the following specific tests (the plaintiff's heart rate shall be monitored with a heart rate monitor during the testing):

- a. Minnesota Rate of Manipulation
- b. Valpar 9 Work Station
- c. Grip strength (including Jaymar testing, grip dynamometer)
- d. Pinching ability/strength
- e. Lifting/carrying
- f. Purdue Peg Board
- g. Push/Pull
- h. WEST Tool Sort
- i. Ladder climb
- j. Upper body ergometer

Other than the tests described, plaintiff will not be required to undergo any additional tests, exams, interviews, or other assessments or tests of any kind.

2. The testing and examination shall not include any invasive procedures, nor any radiographic studies, nor any bodily fluid testing. At the sole option of plaintiff, the testing and examination may be audiotaped and photographed (still photos) using a hand held digital camera. The photos would be of plaintiff only (photos of the examiner cannot be made absent permission of the defense and the examiner, other than photos of the examiners hands/arms showing the examination). The defense would be provided copies of any audio tapes (at defense expense) and still photos (provided in electronic form) made by plaintiff. The defense is also entitled to take still photos under the same conditions. Plaintiff's counsel

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2 shall be allowed to attend the testing and examination, if he chooses. Counsel for the plaintiff
3 shall be limited to observing the examination and testing (and audio and/or photographing as
4 set forth above). This order does not address the use or admissibility at trial of any audio
5 recordings or photos made of this examination.

6 3. Plaintiff has no obligation to provide any written information of any kind to
7 the examiner at any time. Should plaintiff elect to provide no written information to the
8 examiner, no criticism or comment may be directed to plaintiff, whether during the
9 Fed.R.Civ.Pro. 35 examination, or at any other later time, concerning her decision to provide,
10 or to not provide, written information to the examiner.

11 4. Plaintiff has no obligation of any kind to provide records, films, or other
12 materials to examiner.

13 5. Defendant Kain's counsel shall provide to plaintiff's counsel copies of all
14 correspondence, records, or other materials provided to the examiner no later than January 19,
15 2007.

16 6. Defendant Kain's counsel shall notify the examiner listed in Paragraph 1,
17 above, of the terms and conditions of this stipulation and court order at least 48 hours prior to
18 the examination.

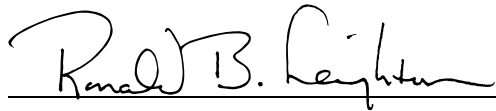
19 7. Following the preparation of any report by the examiner, defendant shall
20 provide plaintiff's counsel with a full copy of the report and copies of any notes, whether
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2 written or recorded, taken by the examiner, within five (5) days of defendant Kain's counsel's
3 receipt of same.

4 Dated this 18th day of January, 2007.

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8 RONALD B. LEIGHTON
9 UNITED STATES DISTRICT JUDGE
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2 PRESENTED BY:

3 LAW OFFICES OF T. JEFFREY
4 KEANE, PLLC

5 By: /s/_____
6 T. Jeffrey Keane, WSBA #8465
7 Attorney for Plaintiff

8 Service Accepted, Notice of Presentation
9 Waived, Consent to Entry Given:

9

10 WILLIAMS KASTNER & GIBBS, PLLC

11 By: /s/_____
12 Elizabeth McAmis, WSBA 24224
13 Attorney for Defendants Kain

14 JOHNSON, GRAFFE, KEAY, MONIZ
15 & WICK, LLP

16 By: /s/_____
17 Eugene Studer, WSBA #20175
18 Attorney for Harrison Hospital

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